

110TH CONGRESS
2D SESSION

S. 1255

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2008

Referred to the Committee on Natural Resources and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AN ACT

To protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. 7.**

2 This Act may be cited as the “Indian Arts and Crafts
3 Amendments Act of 2008”.

4 **SEC. 2. INDIAN ARTS AND CRAFTS.**

5 (a) CRIMINAL PROCEEDINGS; CIVIL ACTIONS; MIS-
6 REPRESENTATIONS.—Section 5 of the Act entitled “An
7 Act to promote the development of Indian arts and crafts
8 and to create a board to assist therein, and for other pur-
9 poses” (25 U.S.C. 305d) is amended to read as follows:

10 **“SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.**

11 “(a) DEFINITION OF FEDERAL LAW ENFORCEMENT
12 OFFICER.—In this section, the term ‘Federal law enforce-
13 ment officer’ includes a Federal law enforcement officer
14 (as defined in section 115(c) of title 18, United States
15 Code).

16 “(b) AUTHORITY TO CONDUCT INVESTIGATIONS.—
17 Any Federal law enforcement officer shall have the author-
18 ity to conduct an investigation relating to an alleged viola-
19 tion of this Act occurring within the jurisdiction of the
20 United States.

21 “(c) CRIMINAL PROCEEDINGS.—

22 “(1) INVESTIGATION.—

23 “(A) IN GENERAL.—The Board may refer
24 an alleged violation of section 1159 of title 18,
25 United States Code, to any Federal law enforce-
26 ment officer for appropriate investigation.

“(B) REFERRAL NOT REQUIRED.—A Federal law enforcement officer may investigate an alleged violation of section 1159 of that title regardless of whether the Federal law enforcement officer receives a referral under subparagraph (A).

“(2) FINDINGS.—The findings of an investigation of an alleged violation of section 1159 of title 18, United States Code, by any Federal department or agency under paragraph (1)(A) shall be submitted, as appropriate, to—

“(A) a Federal or State prosecuting authority; or

“(B) the Board.

“(3) RECOMMENDATIONS.—On receiving the findings of an investigation under paragraph (2), the Board may—

“(A) recommend to the Attorney General that criminal proceedings be initiated under section 1159 of title 18, United States Code; and

“(B) provide such support to the Attorney General relating to the criminal proceedings as the Attorney General determines to be appropriate.

1 “(d) CIVIL ACTIONS.—In lieu of, or in addition to,
 2 any criminal proceeding under subsection (c), the Board
 3 may recommend that the Attorney General initiate a civil
 4 action under section 6.”.

5 (b) CAUSE OF ACTION FOR MISREPRESENTATION.—
 6 Section 6 of the Act entitled “An Act to promote the devel-
 7 opment of Indian arts and crafts and to create a board
 8 to assist therein, and for other purposes” (25 U.S.C.
 9 305e) is amended—

10 (1) by striking subsection (d);

11 (2) by redesignating subsections (a) through (c)
 12 as subsections (b) through (d), respectively;

13 (3) by inserting before subsection (b) (as redes-
 14 ignated by paragraph (2)) the following:

15 “(a) DEFINITIONS.—In this section:

16 “(1) INDIAN.—The term ‘Indian’ means an in-
 17 dividual that—

18 “(A) is a member of an Indian tribe; or

19 “(B) is certified as an Indian artisan by an
 20 Indian tribe.

21 “(2) INDIAN PRODUCT.—The term ‘Indian
 22 product’ has the meaning given the term in any reg-
 23 ulation promulgated by the Secretary.

24 “(3) INDIAN TRIBE.—

1 “(A) IN GENERAL.—The term ‘Indian
2 tribe’ has the meaning given the term in section
3 4 of the Indian Self-Determination and Edu-
4 cation Assistance Act (25 U.S.C. 450b).

5 “(B) INCLUSION.—The term ‘Indian tribe’
6 includes, for purposes of this section only, an
7 Indian group that has been formally recognized
8 as an Indian tribe by—

9 “(i) a State legislature;

10 “(ii) a State commission; or

11 “(iii) another similar organization
12 vested with State legislative tribal recogni-
13 tion authority.

14 “(4) SECRETARY.—The term ‘Secretary’ means
15 the Secretary of the Interior.”;

16 (4) in subsection (b) (as redesignated by para-
17 graph (2)), by striking “subsection (c)” and insert-
18 ing “subsection (d)”;

19 (5) in subsection (c) (as redesignated by para-
20 graph (2))—

21 (A) by striking “subsection (a)” and in-
22 serting “subsection (b)”;

23 (B) by striking “suit” and inserting “the
24 civil action”;

1 (6) by striking subsection (d) (as redesignated
2 by paragraph (2)) and inserting the following:

3 “(d) PERSONS THAT MAY INITIATE CIVIL AC-
4 TIONS.—

5 “(1) IN GENERAL.—A civil action under sub-
6 section (b) may be initiated by—

7 “(A) the Attorney General, at the request
8 of the Secretary acting on behalf of—

9 “(i) an Indian tribe;

10 “(ii) an Indian; or

11 “(iii) an Indian arts and crafts orga-
12 nization;

13 “(B) an Indian tribe, acting on behalf of—

14 “(i) the Indian tribe;

15 “(ii) a member of that Indian tribe; or

16 “(iii) an Indian arts and crafts orga-
17 nization;

18 “(C) an Indian; or

19 “(D) an Indian arts and crafts organiza-
20 tion.

21 “(2) DISPOSITION OF AMOUNTS RECOVERED.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), an amount recovered in a
24 civil action under this section shall be paid to
25 the Indian tribe, the Indian, or the Indian arts

1 and crafts organization on the behalf of which
2 the civil action was initiated.

3 “(B) EXCEPTIONS.—

4 “(i) ATTORNEY GENERAL.—In the
5 case of a civil action initiated under para-
6 graph (1)(A), the Attorney General may
7 deduct from the amount—

8 “(I) the amount of the cost of
9 the civil action and reasonable attor-
10 ney’s fees awarded under subsection
11 (c), to be deposited in the Treasury
12 and credited to appropriations avail-
13 able to the Attorney General on the
14 date on which the amount is recov-
15 ered; and

16 “(II) the amount of the costs of
17 investigation awarded under sub-
18 section (c), to reimburse the Board
19 for the activities of the Board relating
20 to the civil action.

21 “(ii) INDIAN TRIBE.—In the case of a
22 civil action initiated under paragraph
23 (1)(B), the Indian tribe may deduct from
24 the amount—

1 “(I) the amount of the cost of
2 the civil action; and

3 “(II) reasonable attorney’s fees.”;
4 and

5 (7) in subsection (e), by striking “(e) In the
6 event that” and inserting the following:

7 “(e) SAVINGS PROVISION.—If”.

8 **SEC. 3. MISREPRESENTATION OF INDIAN PRODUCED**
9 **GOODS AND PRODUCTS.**

10 Section 1159 of title 18, United States Code, is
11 amended—

12 (1) by striking subsection (b) and inserting the
13 following:

14 “(b) PENALTY.—Any person that knowingly violates
15 subsection (a) shall—

16 “(1) in the case of a first violation by that per-
17 son—

18 “(A) if the applicable goods are offered or
19 displayed for sale at a total price of \$1,000 or
20 more, or if the applicable goods are sold for a
21 total price of \$1,000 or more—

22 “(i) in the case of an individual, be
23 fined not more than \$250,000, imprisoned
24 for not more than 5 years, or both; and

1 “(ii) in the case of a person other
2 than an individual, be fined not more than
3 \$1,000,000; and

4 “(B) if the applicable goods are offered or
5 displayed for sale at a total price of less than
6 \$1,000, or if the applicable goods are sold for
7 a total price of less than \$1,000—

8 “(i) in the case of an individual, be
9 fined not more than \$25,000, imprisoned
10 for not more than 1 year, or both; and

11 “(ii) in the case of a person other
12 than an individual, be fined not more than
13 \$100,000; and

14 “(2) in the case of a subsequent violation by
15 that person, regardless of the amount for which any
16 good is offered or displayed for sale or sold—

17 “(A) in the case of an individual, be fined
18 under this title, imprisoned for not more than
19 15 years, or both; and

20 “(B) in the case of a person other than an
21 individual, be fined not more than
22 \$5,000,000.”; and

23 (2) in subsection (c), by striking paragraph (3)
24 and inserting the following:

25 “(3) the term ‘Indian tribe’—

1 “(A) has the meaning given the term in
2 section 4 of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 450b);
4 and

5 “(B) includes, for purposes of this section
6 only, an Indian group that has been formally
7 recognized as an Indian tribe by—

8 “(i) a State legislature;

9 “(ii) a State commission; or

10 “(iii) another similar organization
11 vested with State legislative tribal recogni-
12 tion authority; and”.

Passed the Senate September 23 (legislative day,
September 17), 2008.

Attest:

NANCY ERICKSON,

Secretary.